

Decision Summary RA20028

This document summarizes my reasons for issuing Authorization RA20028 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20028. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

1. Background

On May 13 2020, Hutterian Brethren Church of Camrose (Camrose Colony) submitted a Part 1 application to the NRCB to construct a new earthen liquid manure storage at an existing multi species CFO. The Part 2 application was submitted on May 13, 2020. On July 27, 2020, I deemed the application complete.

The CFO proposes to construct a new earthen liquid manure storage (or EMS 166.1 m 45.7 m x 5.5 m total depth with 4 m of the facility below ground). The new EMS will allow for additional manure management flexibility at the CFO. There is no proposed increase in livestock.

I note that this application is for an EMS, but the geotechnical report attached to the AOPA application discusses an adjacent (and proposed) two staged municipal lagoon. I am not considering the two staged municipal lagoon in this decision summary, or its related documents, as I am unable to do so under AOPA.

On August 26, 2020 a representative of Camrose Colony sent me an email which indicated that the application was to be revised so that the new EMS would be five metres below ground not four as previously stated in the application.

Under AOPA, this type of application requires an authorization. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The CFO is currently located at S1/2 and NE 3-48-20 W4M. The proposed EMS is to be in NW 3-48-20 W4M in Camrose County, adjacent to the existing CFO. The CFO is located roughly 6.4 km north of the City of Camrose. The terrain is relatively flat and surrounded by rolling terrain.

b. Existing permitted facilities

The CFO is grandfathered with a deemed approval under section 18.1 of AOPA. This deemed approval includes Camrose County issued municipal development permits 99-084 and 01-123 issued August 17, 1999 and October 29, 2001 respectively, and allows the construction and operation of a multi species CFO.

Since AOPA came into effect on January 1, 2002, the NRCB has issued the CFO Approvals RA09027 and RA10002M (which cancelled Camrose County issued permit 01-123), and Authorization RA15054 on October 1, 2009, January 5, 2010, and September 26, 2016, respectively. (The NRCB determined the CFO's grandfathered status when it issued Approval RA09027. The determination is in Decision Report RA09027.) Collectively, these NRCB permits and the CFO's deemed approval allow Camrose Colony to construct and operate a multi species CFO. The CFO's number and type of permitted livestock at the CFO are stated in Approval RA09027.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are "affected" by the application. Section 5 of AOPA's Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also "directly affected" parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Camrose County is both an affected and directly affected party because the CFO is located within its boundaries.

On July 27, 2020, the NRCB emailed referral letters and a copy of the application to Camrose County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Agriculture and Forestry (AF).

3. Responses from the municipality and referral agencies

I received responses from Camrose County, AEP and AF. No response was received from AHS.

Ms. Kim MacMurray, a development officer with Camrose County, provided a written response on behalf of Camrose County. As noted in part 2 above, Camrose County is a directly affected party.

Ms. MacMurray stated that the application is consistent with Camrose County's municipal development plan (MDP). The application's consistency with Camrose County's MDP is further addressed in Appendix A, attached.

Ms. MacMurray also listed the setbacks required by Camrose County's land use bylaw (LUB) of 10 m from the side and rear property lines and 40 m from the road way property line. She did not confirm if the application met those setbacks. I reviewed the scaled sketches included with the application for the new EMS and note that it will meet the above stated setbacks.

Ms. Laura Partridge, a senior water administration officer with AEP, did not raise concern with regards to the application as it did not involve an increase in livestock (or an increased water requirement).

Mr. Jeff Presley, a member of the inspection and investigation section of AF's animal health and assurance branch, did not raise any concerns with this application.

I note how the colony submitted a request to alter the depth of the new EMS after the above had an opportunity to comment on the application. I am of the opinion that the alteration to the application does not impact the responses from Camrose County or AEP, nor would it materially impact AHS or AF.

4. Environmental risk screening of existing and proposed facilities

When reviewing new authorization applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool provides for a numeric scoring of risks, within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment, unless site changes are identified that require a new assessment, or the assessment was done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Camrose Colony's existing CFO facilities were assessed in 2016. The assessment indicated that the risks to surface water and groundwater were low.

Since the 2016 risk assessment, a new water well was drilled at the CFO. For this reason, I re-assessed the risks posed by the CFO's existing facilities. I first assessed the potential risk posed by the swine liquid manure tank and the feedlot's catch basin as these facilities appear to be the CFO's highest risk facilities. Both of these facilities pose a low potential risk to groundwater and surface water. Since these two facilities are presumed to be the highest risk ones at the CFO and they both pose a low potential risk, further assessment of the other manure collection areas and storage facilities is not warranted (as the remaining facilities are presumed to present a low risk to surface water and groundwater).

I also assessed the proposed new EMS, using the NRCB's risk screening tool, and determined that it also poses a low potential risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed EMS is consistent with the land use provisions of Camrose County's MDP. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed EMS:

- Does not meet the required AOPA setback to one nearby residence, (this AOPA setback is known as the "minimum distance separation" requirements, or MDS). Despite this, section 3(5)(b) of the Standards and Administration Regulation allows for a permit to be issued as the total amount of manure produced on an annual basis will not be increasing. Further, there are other existing manure collection areas and manure storage facilities located between the proposed EMS and this residence. The MDS setback is met to all other surrounding residences.

- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

6. Terms and conditions

Authorization RA20028 permits the construction of the new EMS. It also contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Authorization RA20028 includes conditions that:

- Requires construction to occur at least one metre above the water table
- Set a deadline of September 30, 2022 for the approved construction to be completed
- Require submission of an qualified professional's completion report for the new EMS
- Prohibit Camrose Colony from placing manure in the new EMS until it has been inspected by the NRCB following its construction

For an explanation of the reasons for these conditions, see Appendix B.

7. Conclusion

Authorization RA20028 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20028.

Authorization RA20028 should be read in conjunction with the deemed permit, including Camrose County issued development permit 99-084, and NRCB issued Approvals RA09027 and RA10002M, and Authorization RA15054, which all remain in effect.

September 4, 2020

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA20028

APPENDIX A: Consistency with the municipal development plan

Under section 22 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(2.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” for a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”)

Camrose Colony’s CFO is located in Camrose County and is therefore subject to that county’s MDP. Camrose County adopted the latest revision to this plan on April 12, 2016, under Bylaw 1372.

The portions of Camrose County’s MDP relevant to this application are discussed below:

Policy 4.3.7 of the MDP states that applications for new or expanding CFOs shall meet the *Agricultural Operations Practices Act*.

As discussed in part five above this application meets all relevant AOPA requirements.

Policy 4.3.8 states that at the discretion of County Council, large CFOs shall be prohibited in the County.

This policy likely is not a “land use provision” because it calls for discretionary judgements about the size of the CFO. Further, the MDP does not define what qualifies as a large CFO. In light of section 8.2.5 of the NRCB’s *Approvals* Policy (Policy 2016-7) and section 22(2.1) of AOPA, I cannot consider this policy as part of this MDP consistency determination.

Policy 4.3.9 states that development of new or expanding CFOs shall not be supported within 3,219 m (2 miles) of the City of Camrose, 3,219 m (2 miles) from any recreational lake (defined in the MDP as Miquelon Lake, Little Beaver Lake, Bittern Lake, Red Deer Lake, Buffalo Lake, and Dried Meat Lake) or 1,610 m (1 mile) from any other urban municipality or hamlet as outlined in the IDP.

This CFO is not located within any of the above stated setbacks. So this policy does not apply to this application.

For the above reasons, I have determined that this application is consistent with the land use provisions of Camrose County’s MDP. As noted in Part three of this decision summary, a development officer with Camrose County has indicated that this application is consistent with the county’s MDP, which supports my conclusion.

APPENDIX B: Explanation of conditions in Authorization

Authorization RA20028 includes several conditions, discussed below:

a. Construction above the water table

Section 9 (3) of the Standards and Administration Regulation (SAR) under the *Agricultural Operation Practices Act (AOPA)* prohibits construction of a manure storage facility using a protective layer if the bottom of the facility is less than one metre above the water table at the site “at the time of construction.”

I note that application RA20028 proposed an earthen liquid manure storage or EMS with a naturally occurring protective layer (with four metres of the EMS constructed below ground). The application was later amended so that the base of the EMS would be five metres below ground. I also note how the Clifton report attached to the application states a water table depth deeper than six metres, but that the water table depth was recovering (or rising) as it was observed.

Based on this information, the proposed EMS will likely meet the one metre requirement of section 9 (3). However, because the height of the water table can vary over time, a condition is included requiring applicant to cease construction and notify the NRCB immediately if the water table is observed to be less than one metre from the base of the new EMS as it is being constructed.

b. Construction Deadline

Camrose Colony proposes to complete construction of the proposed new EMS by September 30, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of September 30, 2022 is included as a condition in Authorization RA20028.

c. Post-construction inspection and review

The NRCB's general practice is to include a condition in new permits to ensure that the newly constructed facilities are constructed in accordance with their required design specifications. Accordingly, Authorization RA20028 includes a condition requiring the submission of a completion report, stamped by a qualified professional, certifying that manure storage portion of the new EMS:

- has a concrete splash pad that is installed below the inlet
- inlet is located in the lower quarter of the EMS
- has a water stop collar installed around the inlet pipe as proposed
- is constructed in the proposed location
- dimensions including horizontal and vertical dimensions, elevations above and below grade, berm heights, and side slopes

The NRCB routinely inspects newly constructed facilities to assess whether they were constructed according to their required design specifications. To be effective, these inspections must occur before manure is placed in them. Authorization RA20028 includes a condition stating that Camrose Colony shall not place manure in the manure storage portions of the new EMS until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.